

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

September 8, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:06MD-134

MAUI

Amend Grant of Non-Exclusive Easement Bearing Land Office  
Deed No. S-28226, Issued to Friedrich Bathelt and Thorunn  
Bathelt, Honopou, Maui, Tax Map Key: (2) 2-9-3:portions 16,  
17, 20 and 39

BACKGROUND:

The Land Board at its June 9, 1989 meeting, under agenda item F-5, authorized the direct sale of a perpetual, non-exclusive easement to Friedrich and Thorunn Bathelt for access and utility purposes. The Bathelt property (tax map key: 2-9-1:7) lacked legal access. The easement alignment would not only cross through State lands, but private lands. Permission was obtained from private property owners and State tenants. Subsequently, the Board at its March 23, 1990 meeting, under agenda item F-5, amended its prior approval by expanding the width of the easement from 15 to 40 feet wide due to new requirement established by County of Maui Ordinance No. 789, Bill No. 18 (1974). Grant of Non-Exclusive Easement was executed on February 17, 1998. Consideration paid for the easement was \$5,350.

Recently, Mr. Paul Mancini on behalf of the Bathelt's, is requesting the Land Board's consent to the assignment of the grant of easement to Michael and Leslie Engl. The Bathelt's are selling their property.

Staff reviewed the grant of easement document. The perpetual easement document was issued in 1998, a time when the State's perpetual easements did not "run with the land". Easements now issued by the State have such a provision. All that is required is the grantee is required to inform his successor of our liability insurance requirement when the easement is sold. This eliminates needless paperwork and time by the Board, staff, Attorney General's office, grantee, private attorneys, escrow companies, etc.

RECOMMENDATION: That the Board:

- A. Amend Grant of Non-Exclusive Easement Bearing Land Office Deed No. S-28226 to include the following condition:

"The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key; (2) 2-9-1:7; provided that when the easement is sold, assigned, conveyed, or otherwise

September 8, 2006

transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document";

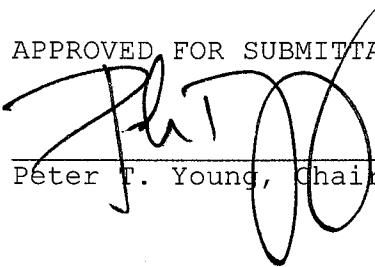
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Daniel Ornellas  
Maui District Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

**EXHIBIT "A"**

THE OFFICIAL OF THE RECORDS  
RECORDED AS FOLLOWS  
STATE OF HAWAII

BUREAU OF CONVEYANCES  
FEB 18 1998 80✓  
DATE  
DOCUMENT NO. 48-020664

LAND COURT SYSTEM ) REGULAR SYSTEM  
Return by Mail ( ) Pickup (X) To:  
DEPT. OF LAND AND NATURAL RESOURCES  
LAND DIVISION

Total Pages: 16

Tax Map Key No. (2) 2-9-03:por. 16, 17, 20, and 39

GRANT OF NON-EXCLUSIVE EASEMENT

THIS INDENTURE, made and entered into this 17th day of February, 1998, by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "Grantor," and FRIEDRICH BATHELT and THORUNN E. BATHELT, husband and wife, as tenants by the entirety, whose address is 209 West Blithedale Avenue, Mill Valley, California 94941, hereinafter referred to as the "Grantees."

WITNESSETH THAT:

The Grantor, for and in consideration of the sum of FIVE THOUSAND THREE HUNDRED FIFTY AND NO/100 DOLLARS (\$5,350.00), the receipt of which is hereby acknowledged, commencing June 9, 1989, and of the terms, conditions, and covenants herein contained, and on the part of the Grantees to be observed and performed, does hereby grant unto the Grantees, the following non-exclusive and perpetual easement rights:

Right, privilege, and authority to construct, reconstruct, use, maintain and repair roadway for access and utilities purposes

in, over, under and across that certain parcel of land situate at Honopou, Makawao, Maui, Hawaii, being identified as

# EXHIBIT "A"

"Perpetual Non-Exclusive Access and Utility Easement, Easements 1 2, 3 and 4," being portions of the Government Land of Honopou, further described as follows:

EASEMENT 1, containing an area of 39,298 square feet, more particularly described in Exhibit "A" and delineated on Exhibit "B", both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 21,609 and dated October 9, 1991; and

EASEMENT 2, containing an area of 3,227 square feet, EASEMENT 3, being also a portion of the New Haiku Ditch Right-of-Way, containing an area of 1,715, square feet, and EASEMENT 4, containing an area of 97,897 square feet, all more particularly described in Exhibit "C" and delineated on Exhibit "D," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated C.S.F. No. 21,610 and dated October 9, 1991,

TOGETHER WITH the rights of ingress and egress to and from the easement areas for all purposes in connection with the rights hereby granted.

TO HAVE AND TO HOLD the easement rights unto the Grantees, their successors and assigns, in perpetuity, SUBJECT, HOWEVER, to the following terms, conditions and covenants:

1. The Grantees shall at all times with respect to the easement areas use due care for public safety and agree to indemnify, defend, and hold the Grantor and East Maui Irrigation Company, Limited, as relating to its underground ditch for water transmission purposes, harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the Grantees relating to the Grantees' use, occupancy, maintenance, or enjoyment of the easement areas; 2) any failure on the part of the Grantees to maintain the easement areas and sidewalks, roadways and parking areas adjacent thereto in the Grantees' use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Grantees to maintain the easement areas in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought

## EXHIBIT "A"

or made by reason of the Grantees' non-observance or non-performance of any of the terms, covenants, and conditions of this grant of non-exclusive easements or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

2. The Grantor reserves unto itself, its successors and assigns, the full use and enjoyment of the easement areas and to grant to others rights and privileges for any and all purposes affecting the easement areas, provided, however, that the rights herein reserved shall not be exercised by the Grantor and similar grantee(s) in any manner which interferes unreasonably with the herein Grantees in the use of the easement areas for the purposes for which this easement is granted.

3. All improvements placed in or upon the easement areas by the Grantees shall be done without cost or expense to the Grantor and shall remain the property of the Grantees and may be removed or otherwise disposed of by the Grantees at any time; provided, that the removal shall be accomplished with minimum disturbance to the easement areas which shall be restored to their original condition, or as close thereto as possible, within a reasonable time after removal.

4. Upon completion of any work performed in or upon the easement areas, the Grantees shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the easement areas in a clean and sanitary condition satisfactory to the Grantor.

5. This easement or any rights granted herein shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Grantor.

6. The Grantees shall keep the easement areas and the improvements thereon in a safe, clean, sanitary, and orderly condition, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the easement areas.

7. Should future development necessitate relocation of the easements granted herein, or any portion thereof, the relocation shall be accomplished at the Grantees' own cost and expense; provided, however, that if other lands of the Grantor are available, the Grantor will grant to the Grantees without payment of any monetary consideration, substitute easements of similar width within the reasonable vicinity of the original

## EXHIBIT "A"

alignments, which substitute easements shall be subject to the same terms and conditions as that herein granted and as required by law.

8. The Grantees covenant, for themselves, their successors and assigns, that the use and enjoyment of the land herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

9. The Grantees, in the exercise of the rights granted herein, shall comply with all of the requirements of the federal, state, and county authorities and shall observe all county ordinances and state and federal statutes, rules and regulations, now in force or which may hereinafter be in force.

10. These easement rights shall cease and terminate, and the easement areas shall revert to the Grantor, without any action on the part of the Grantor, in the event of non-use or abandonment by the Grantees of the easement areas, or any portion thereof, for a consecutive period of one (1) year.

11. The Grantees shall, upon termination and/or revocation of this easement, peaceably deliver unto the Grantor possession of the premises, together with all improvements existing or constructed thereon or Grantees shall remove such improvements and shall restore the premises to its original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantees, at the option of the Grantor. Furthermore, upon the termination and/or revocation of this easement, should the Grantees fail to remove any and all of Grantees' personal property from the premises, after notice thereof, the Board may remove any and all of Grantees' personal property from the premises, and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Grantees and the Grantees do agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the easement.

12. In case the Grantor shall, without any fault on its part, be made a party to any litigation commenced by or against the Grantees as a result of this grant of non-exclusive easements (other than condemnation proceedings), the Grantees shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the Grantor; furthermore, the Grantees shall pay all costs, including reasonable attorney's fees and expenses, which may be incurred by or paid

## EXHIBIT "A"

by the Grantor in enforcing the covenants and conditions of this grant of non-exclusive easements, or in the collection of delinquent rental, fees, taxes, and any and all other applicable charges attributed to said easement areas.

13. The Grantees shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Grantees shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the easement areas any such materials except to use in the ordinary course of Grantees' business, and then only after written notice is given to Grantor of the identity of such materials and upon Grantor's consent which consent may be withheld at Grantor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantees, then the Grantees shall be responsible for the reasonable costs thereof. In addition, Grantees shall execute affidavits, representations and the like from time to time at Grantor's request concerning Grantees' best knowledge and belief regarding the presence of hazardous materials on the easement areas placed or released by Grantees.

The Grantees agree to indemnify, defend, and hold Grantor harmless, from any damages and claims resulting from the release of hazardous materials on the easement areas occurring while Grantees are in possession, or elsewhere if caused by Grantees or persons acting under Grantees. These covenants shall survive the expiration or earlier termination of this easement.

For the purpose of this easement "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Time is of the essence in this agreement and if the Grantees shall abandon the premises, or if this easement and premises shall be attached or taken by operation of law, or if any assignment is made of the Grantees' property for the benefit of creditors, or if Grantees shall fail to observe and perform any of the covenants, terms, and conditions contained

## EXHIBIT "A"

in this easement and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) calendar days after delivery by the Grantor of a written notice of breach or default, by personal service, registered mail or certified mail to the Grantees at their last known address and to each mortgagee or holder of record having a security interest in the premises, the Grantor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this easement without prejudice to any other remedy or right of action for any preceding or other breach of contract; and in the event of termination, at the option of Grantor, all improvements shall remain and become the property of the Grantor or shall be removed by Grantees.

15. The Grantor reserves the right to withdraw the easement for public use or purposes, at any time during this grant of easement upon the giving of reasonable notice by the Grantor and without compensation.

16. The Grantees shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this easement without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

17. In the event the Grantor seeks to forfeit the privilege, interest, or estate created by this easement, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) calendar days, from the date of receipt of the Grantor's notice, or within an additional period allowed by Grantor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Grantor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Grantor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate



## EXHIBIT "A"

the outstanding privilege, interest, or estate without prejudice to any other right or remedy for any preceding or other breach or default and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt secured; provided that a reasonable delay by the Grantor in instituting or prosecuting its rights or remedies shall not operate as a waiver of these rights or to deprive it of a remedy when it may still otherwise hope to resolve the problems created by the breach or default. The proceeds of any redispense shall be applied, first, to reimburse the Grantor for costs and expenses in connection with the redispense; second, to discharge in full any unpaid purchase price or other indebtedness owing the Grantor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon redispense which exceeds the fair market value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate.

18. The Grantees shall procure and maintain, at their own cost and expense, in full force and effect throughout the term of this easement, commercial general liability insurance, in an amount of at least \$300,000.00 for each occurrence and \$500,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire easement areas, including all grounds and all roadways or sidewalks on or adjacent to the easement in the use or control of the Grantees.

19. The easement areas shall not be used at any time by the Grantees, their guests or invitees for parking purposes or storage of any vehicle, equipment, and/or construction materials and other items.

20. Grantees shall not construct, place or maintain any building or structure over and upon the easement areas.

21. The Grantees shall be responsible for securing subdivision approval from the County of Maui for the easement areas.

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**EXHIBIT "A"**

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Indenture to be executed as of the day, month, and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meetings held on June 9, 1989 and March 23, 1990.

By *Simon S. Coloma*  
Chairperson and Member  
Board of Land and  
Natural Resources

GRANTOR

*Friedrich Bathelt*  
FRIEDRICH BATHELT

*Thorunn E. Bathelt*  
THORUNN E. BATHELT

GRANTEES

APPROVED AS TO FORM:

*James J. O'Rourke*  
Deputy Attorney General

Dated: *September 10, 1997*

2671(16)

EXHIBIT "A"

STATE OF Hawaii )  
COUNTY OF Maui ) SS.

On this 13<sup>th</sup> day of December, 1997, before me personally appeared FRIEDRICH BATHELT and THORUNN E. BATHELT, husband and wife, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Michael Montoya  
Notary Public, State of

My commission expires: 10/14/2001

L.S.



**EXHIBIT "A"**

**STATE OF HAWAII**

**SURVEY DIVISION**

**DEPT. OF ACCOUNTING AND GENERAL SERVICES**

**HONOLULU**

C.S.F. No. 21,609

October 9, 1991

**PERPETUAL NON-EXCLUSIVE  
ACCESS AND UTILITY EASEMENT**

**EASEMENT 1**

**Honopou, Makawao, Maui, Hawaii**

Being a portion of the Government Land of Honopou.

Beginning at the northwest corner of this easement, at the southwest corner of Grant 9267 to Ernest Wilhelm, Sr. and on the boundary between the lands of Halehaku and Honopou, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI" being 5716.27 feet North and 8952.77 feet East, thence running by azimuths measured clockwise from True South:-

- |                 |   |
|-----------------|---|
| 1. 290° 42' 30" | 44.96 feet along Grant 9267 to Ernest Wilhelm, Sr.;                   |
| 2. 353° 32' 40" | 375.91 feet along the remainder of the Government<br>Land of Honopou; |
| 3. 330° 45'     | 599.18 feet along the remainder of the Government<br>Land of Honopou; |
| 4. 91° 28' 30"  | 33.75 feet along the north side of Government Road<br>(40-Ft. wide);  |
| 5. 60° 45'      | 10.99 feet along the north side of Government Road<br>(40-Ft. wide);  |
| 6. 150° 45'     | 590.00 feet along R.P. 1666, L.C.Aw. 8515, Ap. 3 to<br>Keoni Ana;     |

**EXHIBIT "A"**

October 9, 1991

**EXHIBIT "A"**

7. 173° 32' 40"

404.50 feet along R.P. 1666, L.C.Aw. 8515, Ap. 3 to  
Keoni Ana to the point of beginning and  
containing an AREA OF 39,298 SQUARE  
FEET.

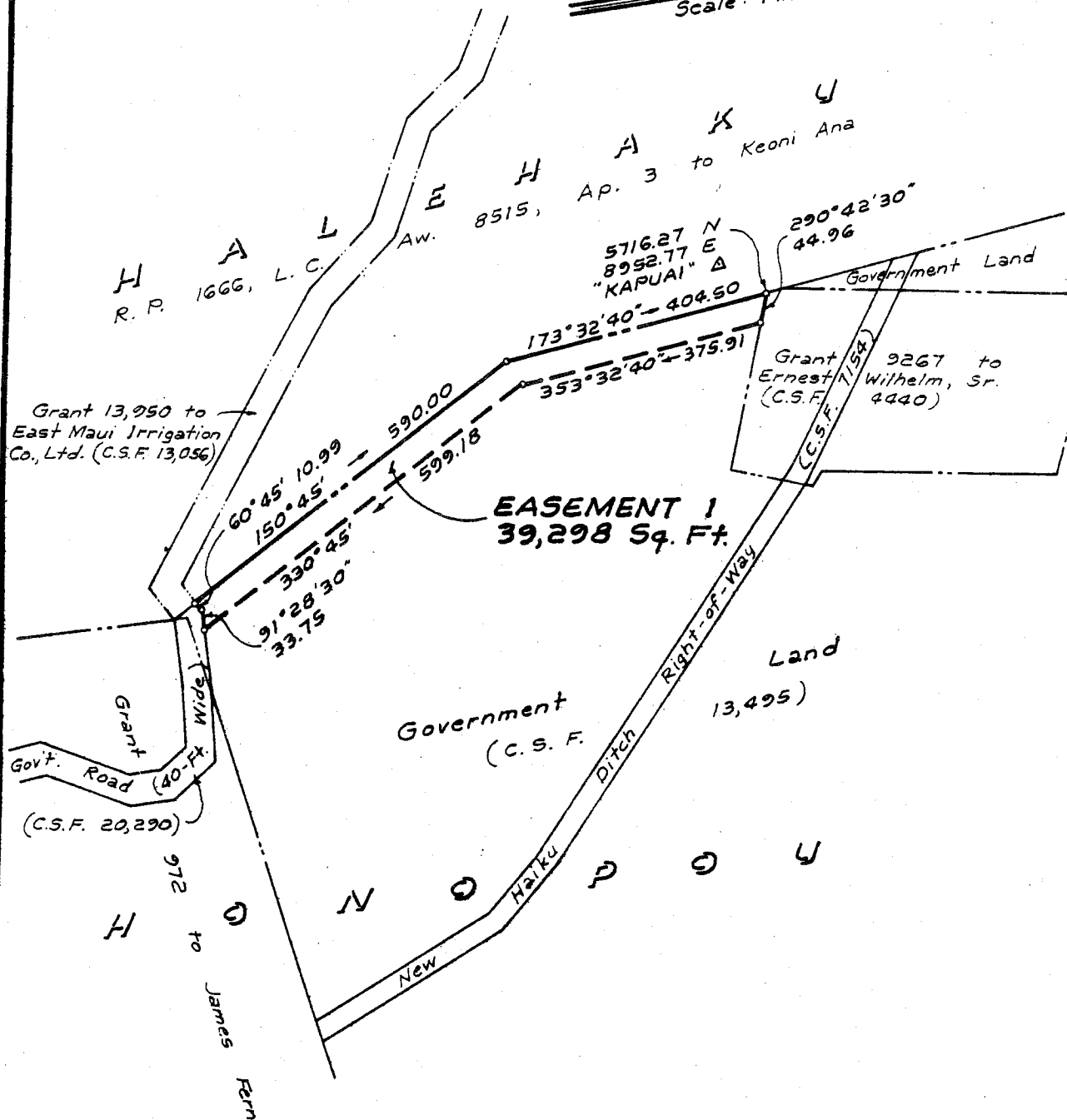
SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Stanley T. Nakamura  
Stanley T. Nakamura  
Land Surveyor gm

Compiled from map and desc.  
furn. by George F. Newcomer,  
C.S.F. 13,495 and other Govt.  
Survey Records.

# EXHIBIT "A"

True North  
Scale: 1 in. = 200 Ft.



## PERPETUAL NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT EASEMENT 1

Honopou, Makawao, Maui, Hawaii

Scale: 1 inch = 200 feet

JOB Ma-218 (91)

C. BK. 1, Kodani

REDUCED  
NOT TO SCALE

TAX MAP 2-9-03: par. 17

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

### EXHIBIT "B"

C.S.F. NO. 21,609

## STATE OF HAWAII

GJK Oct. 9, 1991



**EXHIBIT "A"**

**STATE OF HAWAII**

**SURVEY DIVISION**

**DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU**

C.S.F. No 21,610

October 9, 1991

**PERPETUAL NON-EXCLUSIVE  
ACCESS AND UTILITY EASEMENTS**

**EASEMENTS 2, 3 AND 4**

**Honopou, Makawao, Maui, Hawaii**

Being portions of the Government Land of Honopou.

**EASEMENT 2:**

Beginning at the north corner of this easement, at the southwest corner of the New Haiku Ditch Right-of-Way and on the boundary between the lands of Halehaku and Honopou, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI" being 5907.32 feet North and 8931.14 feet East, thence running by azimuths measured clockwise from True South:-

1. 304° 34' 51.11 feet along the south side of the New Haiku Ditch Right-of-Way;
2. 9° 37' 139.27 feet along Grant 9267 to Ernest Wilhelm, Sr.;
3. 173° 32' 40" 167.37 feet along R.P. 1666, L.C.Aw. 8515, Ap. 3 to Keoni Ana to the point of beginning and containing an AREA OF 3227 SQUARE FEET.

**EASEMENT 3:** Being also a portion of the New Haiku Ditch Right-of-Way.

Beginning at the southwest corner of this easement and on the boundary between the lands of Halehaku and Honopou, the coordinates of said point of

**EXHIBIT "C"**

**EXHIBIT "A"**

beginning referred to Government Survey Triangulation Station "KAPUAI" being 5907.32 feet North and 8931.14 feet East, thence running by azimuths measured clockwise from True South:-

1. 173° 32' 40" 39.77 feet along R.P. 1666, L.C.Aw. 8515, Ap. 3 to Keoni Ana;
2. 304° 34' 63.25 feet along the remainder of the Government Land of Honopou;
3. 9° 37' 33.09 feet along the remainder of the New Haiku Ditch Right-of-Way;
4. 124° 34' 51.11 feet along the remainder of the Government Land of Honopou to the point of beginning and containing an AREA OF 1715 SQUARE FEET.

**EASEMENT 4:**

Beginning at the southwest corner of this easement, at the northwest corner of the New Haiku Ditch Right-of-Way and on the boundary between the lands of Halehaku and Honopou, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPUAI" being 5946.84 feet North and 8926.67 feet East, thence running by azimuths measured clockwise from True South:-

1. 173° 32' 40" 616.16 feet along R.P. 1666, L.C.Aw. 8515, Ap. 3 to Keoni Ana;
2. 204° 59' 1817.00 feet along R.P. 1666, L.C.Aw. 8515, Ap. 3 to Keoni Ana;
3. 300° 30' 40.19 feet along Grant 2471 to Keohokano;
4. 24° 59' 1801.89 feet along the remainder of the Government Land of Honopou;
5. 353° 32' 40" 612.77 feet along the remainder of the Government Land of Honopou;



October 9, 1991

EXHIBIT "A"

6. 263° 32' 40"

17.41 feet along the remainder of the Government  
Land of Honopou;

7. 9° 37'

35.00 feet along Grant 9267 to Ernest Wilhelm, Sr.;

8. 124° 34'

63.25 feet along the north side of the New Haiku  
Ditch Right-of-Way to the point of  
beginning and containing an AREA OF  
97,897 SQUARE FEET.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: Stanley T. Nakamura  
Stanley T. Nakamura  
Land Surveyor gm

Compiled from map and desc.  
furn. by George F. Newcomer,  
CSF 13,495 and other Govt.  
Survey Records.

[illegible]

**PERPETUAL NON-EXCLUSIVE  
ACCESS AND UTILITY EASEMENTS  
EASEMENTS 2, 3 AND 4**

Honopou, Makawao, Maui, Hawaii

Scale: 1 inch = 300 feet

REDUCED  
NOT TO SCALE

**EXHIBIT "D"**

JOB Ma-216(91), Ma-217(91), Ma-219(91)

C. BK. 1, Kodani

TAX MAP

2-2-03:39

por. 16

C.S.F. NO. 21,610

**SURVEY DIVISION  
OF ACCOUNTING AND GENERAL INVESTIGATION  
STATE OF HAWAII**

GJK Oct. 9, 1991